

(a) Scope and purpose.

This section describes the department's policy concerning payment for transportation services provided to Medical Assistance (MA) recipients, the standards to be used in determining when the MA program will pay for transportation, and the prior authorization process required for obtaining such payment. Generally, payment will be made only upon prior authorization for transportation services provided to an eligible MA recipient. Prior authorization will be granted by the prior authorization official only when payment for transportation expenses is essential in order for an eligible MA recipient to obtain necessary medical care and services which may be paid for under the MA program.

(b) Definitions.

(1) Ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

(2) Ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.

(3) Ambulette or invalid coach means a special-purpose vehicle, designed and equipped to provide non-emergency transport that has wheelchair-carrying capacity, stretcher-carrying capacity, or the ability to carry disabled individuals.

(4) Ambulette service means an individual, partnership, association, corporation, or any other legal entity, which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care. An ambulette service provides the invalid, infirm or disabled with personal assistance as defined in this subdivision.

(5) Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.

(6) Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.

(7) Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.

(8) Day treatment program or continuing treatment program means a planned

combination of diagnostic, treatment, and rehabilitative services certified by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.

(9) Department established rate means the rate for any given mode of transportation which the department has determined will ensure the efficient provision of appropriate transportation to MA recipients in order for the recipients to obtain necessary medical care or services.

(10) Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.

(11) Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.

(12) Locally prevailing rate means a rate for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish rates for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.

(13) Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.

(14) Non-emergency ambulance transportation means the provision of ambulance transportation for obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation by an ambulance service.

(15) Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.

(16) Personal assistance means the provision of physical assistance by a provider of ambulette services or the provider's employee to an MA recipient for the purpose of assuring safe access to and from the recipient's place of residence, ambulette vehicle

and MA covered health service provider's place of business. Personal assistance is the rendering of physical assistance to the recipient in walking, climbing or descending stairs, ramps, curbs or other obstacles; opening or closing doors; accessing an ambulette vehicle; and the moving of wheelchairs or other items of medical equipment and the removal of obstacles as necessary to assure the safe movement of the recipient. In providing personal assistance, the provider or the provider's employee will physically assist the recipient which shall include touching, or, if the recipient prefers not to be touched, guiding the recipient in such close proximity that the provider of services will be able to prevent any potential injury due to a sudden loss of steadiness or balance. A recipient who can walk to and from a vehicle, his or her home, and a place of medical services without such assistance is deemed not to require personal assistance.

(17) Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.

(18) Prior authorization official means the department, a social services district, or their designated agents.

(19) Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.

(20) Transportation expenses means:

(i) the costs of transportation services; and

(ii) the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.

(21) Transportation services means:

(i) transportation by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the recipient's medical condition; and

(ii) a transportation attendant to accompany the MA recipient, if necessary. Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.

(22) Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

(23) Vendor means a lawfully authorized provider of transportation services who is either enrolled in the MA program pursuant to Part 504 of this Title or authorized to receive payment for transportation services directly from a social services district or other agent designated by the department. The term vendor does not mean an MA recipient or other individual who transports an MA recipient by means of a private vehicle.

(c) Ambulette and nonemergency ambulance transportation.

(1) Who may order.

Only those practitioners, facilities, or programs listed in paragraph (4) of subdivision (d) of this section may order or submit an order on behalf of a practitioner for ambulette or nonemergency ambulance transportation services.

(2) Criteria for ordering ambulette transportation.

Ambulette transportation may be ordered if any one of the following conditions exist:

(i) The recipient needs to be transported in a recumbent position and the ambulette service ordered has stretcher-carrying capacity; or

(ii) The recipient is wheelchair bound and is unable to use a taxi, livery service, bus or private vehicle; or

(iii) The recipient has a disabling physical condition which requires the use of a walker or crutches and is unable to use a taxi, livery service, bus or private vehicle; or

(iv) The recipient has a disabling physical condition other than one described in subparagraph (iii) of this paragraph or a disabling mental condition, either of which requires the personal assistance provided by an ambulette service, and the ordering practitioner certifies, in a manner designated by the department, that the recipient cannot be transported by a taxi, livery service, bus or private vehicle and requires transportation by ambulette service; or

(v) An otherwise ambulatory recipient requires radiation therapy, chemotherapy, or dialysis treatment which results in a disabling physical condition after treatment and renders the recipient unable to access transportation without the person assistance provided by an ambulette service.

(3) Criteria for ordering nonemergency ambulance transportation.

Nonemergency ambulance transportation may be ordered when the recipient is in need of services while being transported to a provider of medical services which can only be administered by an ambulance service.

(4) Recordkeeping.

The ordering practitioner must note in the recipient's patient record the condition which justifies the practitioner's ordering of ambulette or nonemergency ambulance services.

(5) Audit and claim review.

An ordering practitioner or a facility or program submitting an order on the practitioner's behalf, which does not comply with this subdivision may be subjected to monetary claims and/or program sanctions as provided in section 504.8(a) of this Title.

(d) Prior authorization.

(l) Generally, prior authorization must be obtained before transportation expenses are incurred. Prior authorization is not required for emergency ambulance transportation or Medicare approved transportation by an ambulance service provided to an MA-eligible person who is also eligible for Medicare Part B payments. If transportation services are provided in accordance with section 505.10(e)(7) of this Part, the individualized education program or interim or final individualized family services plan of an MA eligible person will qualify as the prior authorization required by this subdivision.

(2) Requests for prior authorization may be made by the MA recipient, his or her representative, or an ordering practitioner.

(3) The recipient, his or her representative, or ordering practitioner must make the request in the manner required by the prior authorization official.

(4) A request for prior authorization for non-emergency ambulance transportation must

be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, or nurse practitioner. A request for prior authorization for transportation by ambulette or invalid coach must be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner designated by the district and approved by the department. A diagnostic and treatment center, hospital, nursing home, intermediate care facility, long term home health care program, home and community-based services waiver program, or managed care program may submit an order for ambulette or nonemergency ambulance transportation services on behalf of the ordering practitioner.

(5) Each social services district must inform applicants for and recipients of MA of the need for prior authorization in order for transportation expenses to be paid under the MA program and of the procedures for obtaining such prior authorization.

(6) The prior authorization official may approve or deny a request for prior authorization, or require the ordering practitioner to submit additional information before the request is approved or denied.

(7) The prior authorization official must use the following criteria in determining whether to authorize payment of transportation expenses in accordance with subdivision (d) of this section:

(i) When the MA recipient can be transported to necessary medical care or services by use of private vehicle or by means of mass transportation which are used by the MA recipient for the usual activities of daily living, prior authorization for payment for such transportation expenses may be denied;

(ii) when the MA recipient needs multiple visits or treatments within a short period of time and the MA recipient would suffer undue financial hardship if required to make payment for the transportation to such visits or treatments, prior authorization for payment for such transportation expenses may be granted for a means of transportation ordinarily used by the MA recipient for the usual activities of daily living;

(iii) when the nature and severity of the MA recipient's illness necessitates a of transportation other than that ordinarily used by the MA recipient, prior authorization for such a mode of transportation may be granted;

(iv) when the geographic locations of the MA recipient and the provider of medical care and services are such that the usual mode of transportation is

inappropriate, prior authorization for another mode of transportation may be granted;

(v) when the distance to be traveled necessitates a large transportation expense and undue financial hardship to the MA recipient, prior authorization for payment for the MA recipient's usual mode of transportation may be granted;

(vi) when the medical care and services needed are available within the common medical marketing area of the MA recipient's community, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be denied;

(vii) when the need to continue a regimen of medical care or service with a specific provider necessitates travel which is outside the MA recipient's common medical marketing area, notwithstanding the fact that the medical care or service is available within the common medical marketing area, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be granted; and

(viii) when there are any other circumstances which are unique to the MA recipient and which the prior authorization official determines have an effect on the need for payment of transportation expenses, prior authorization for payment for such transportation expenses may be granted.

(e) Payment.

(1) Payment for transportation expenses will be made only when transportation expenses have been prior authorized except for emergency ambulance transportation or Medicare approved transportation by an ambulance service provided to an MA-eligible person who is also eligible for Medicare Part B payments.

(2) Payment for transportation expenses will be made only to the vendor of transportation services, to the MA recipient or to an individual providing transportation services on behalf of the MA recipient.

(3) Payment will be made only for the least expensive available mode of transportation suitable to the MA recipient's needs, as determined by the prior authorization official.

(4) Payment to vendors for transportation services must not exceed the lower of the department established rate, the local established rate, the locally prevailing rate, or the rate charged to the public, by the most direct route for the mode of transportation used.

However, payment may be made in excess of the locally prevailing rate or the rate charged to the public when federal financial participation in the MA payment for transportation services is available and such payment is necessary to assure the transportation service.

(5) Payment to vendors will be made only where an MA recipient is actually being transported in the vehicle.

(6) In order to receive payment for services provided to an MA recipient, a vendor must be lawfully authorized to provide transportation services on the date the services are rendered. A vendor of transportation services is lawfully authorized to provide such services if it meets the following standards:

(i) ambulance services must be certified or registered by the Department of Health and comply with all requirements of that department.

(ii) ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission.

(iii) taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality and with all requirements of the Department of Motor Vehicles; and

(iv) Vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under Article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements.

(7) Payment is available for transportation services provided in order for the recipient to receive an MA covered service is the recipient receives such service (other than transportation services) at school or off of the school premises and both the covered

service and transportation service are included in the recipient's individualized education plan. Payment is available for transportation services provided in order for the recipient, or the recipient's family member or significant other to receive an MA covered service if both the covered service and transportation service are included in the recipient's interim or final individualized family services plan. For purposes of this section, a significant other is a person who substitutes for the recipient's family, interacts regularly with the recipient, and affects directly the recipient's developmental status. Reimbursement for such services must be made in accordance with the provider agreement.

(8) Payment to a provider of ambulette services will only be made for services documented in contemporaneous records in accordance with section 504.3 of this Title. Documentation must include:

- (i) the recipient's name and MA identification number;
- (ii) the origination of the trip;
- (iii) the destination of the trip;
- (iv) the date and time of service; and,
- (v) the name of the driver transporting the recipient.

(9) Payment will not be made for transportation services when:

- (i) the transportation services are ordinarily made available to other persons in the community without charge; however, payment may be made under such circumstances when federal financial participation in the MA payment for transportation services is available;
- (ii) the transportation services are provided by a medical facility and the costs are included in the facility's MA rate;
- (iii) a vendor is not actually transporting an MA recipient;
- (iv) the MA recipient has access to and can make use of transportation, such as a private vehicle or mass transportation, which the recipient ordinarily uses for the usual activities of daily living unless prior authorization has been granted by the prior authorization official.

(f) Medical transportation plans and rate schedules.

(1) The department may either establish rate schedules at which transportation services can be assured or delegate such authority to the social services districts.

(2) As directed by the department, each social services district must prepare and submit for department approval a medical transportation plan which provides for essential transportation of MA recipients to and from medical care and services which may be paid for under the MA program and the rate schedules to be used by the district. The department will approve a transportation plan if it finds that the plan satisfactorily demonstrates that appropriate modes of transportation are available to MA recipients in the social services district and that the rates of payment for transportation are adequate to ensure the availability of transportation to and from medically necessary care and services which can be paid for under the MA program.

(i) Amendments to transportation plans or changes to rate schedules must be submitted at least 60 days prior to the effective date of the amendment. The department may permit a shorter notification period in circumstances where the department has adequate time to review the proposed amendment prior to its effective date. Factors which will be considered in determining whether to shorten the notification period include, but are not limited to, the complexity of the proposed amendment and the number and complexity of any other proposed amendments which the department is reviewing when the request is made. The department may also waive the notification period at the request of the social services district where a waiver would permit more efficient and effective administration of the MA program.

(ii) Plans, rate schedules or amendments may not be implemented without departmental approval.

(iii) The transportation rate schedules submitted for approval must be complete and contain the current department established rates, the locally established rates, or the locally prevailing rates for each transportation service for which the district is required to pay.

(3) Failure to obtain the approval required by this subdivision may result in the social services district being denied federal and state reimbursement for the expenses related to transporting MA recipients to providers of medical care or services.

(4) On request, a vendor of transportation services must submit pertinent cost data, which is available to the vendor, to the department or the social services district. The department or the social services district may not require a certified cost document if providing such certification will result in additional expense to the vendor. Failure to comply with the requirements of this paragraph may result in the vendor's termination from participation in the MA program.

(5) The department or each social services district for which payment of transportation services is made through the Medicaid Management Information System (MMIS) must adhere to the following requirements in establishing payment rates with vendors of transportation services:

(i) The department or the social services district must select at least one of the following:

- (a) a flat rate for all transportation services provided;
- (b) a base rate for all transportation services provided, plus a mileage charge;
- (c) a flat rate for transportation services within specified areas; or
- (d) a mileage rate based on distance.

(ii) The department or the social services district may establish with vendors a reduced rate for any of the following:

- (a) transportation of additional persons;
- (b) transportation of persons traveling to and from day treatment or continuing treatment programs; and
- (c) transportation of persons for purposes of obtaining regularly recurring medical care and services.

(iii) The department or the social services district may establish an additional rate for any of the following:

- (a) other transportation costs, limited to the costs of meals, lodging and transportation attendants. Such costs must be approved by the department before the social services district may establish the additional

rate; and

(b) bridge and road tolls.

(6) Rates established by the department will be deemed part of all applicable social services district medical transportation plans.

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